

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

**FILE:** B-220069

**DATE:** December 12, 1985

**MATTER OF:** Timeplex, Inc.

**DIGEST:**

An agency was not obligated to seek verification or clarification of a best and final offer where the record shows that the agency, while aware of a discrepancy in the offer, reasonably assumed that its interpretation of the offer was correct.

Timeplex, Inc. protests the award of a contract to Dataproducts New England, Inc. under request for proposals (RFP) No. F19630-85-R-0002, issued by the Department of the Air Force for Tempest-certified time division multiplexers,<sup>1/</sup> statistical time division multiplexers, a network control facility, software, and support services. The procurement contemplated the award of a firm-fixed-price, indefinite delivery, indefinite quantity contract not to exceed 96 months in duration. Timeplex asserts that the award was improper because the Air Force failed to afford the firm the opportunity to verify its best and final cost proposal. We deny the protest.

**Background**

The RFP's evaluation criteria at section M provided that the award would be made to that offeror whose proposal met all mandatory requirements of the solicitation and which offered the lowest overall present value contract life cycle cost (LCC) to the government. Section M also stated that the offerors' pricing data must be submitted in the format indicated in sections B and L of the RFP.

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<sup>1/</sup>"Tempest" equipment has been certified by the National Communications Security Subcommittee on Compromising Emanations as fully meeting specified standards for the suppression of compromising electromagnetic emanations. Multiplexers are transmitting and receiving circuits which can carry two or more distinct signals simultaneously.

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Section B provided various pricing tables (hereinafter B-tables) in which offerors were to list the various hardware and software items, descriptions, minimum/maximum quantities, unit purchase prices, unit monthly maintenance charges, and any special pricing provisions proposed. The RFP stated that the B-tables would be used by the government for evaluating the proposals in accordance with the government's LCC evaluation model, and as the basis for verifying that all items necessary to meet the solicitation requirements were in fact proposed and appeared in the price tables exactly as required.

Section L of the RFP provided offerors with instructions for preparing the required "Expected Contract Life Cycle Cost Summary" table (hereinafter L-table). The L-table was to be a summary of the various prices contained in the B-tables, and was to reflect, on a fiscal year basis, the expected contract life cycle costs for each cost element being evaluated.

Four firms submitted proposals in response to the RFP. Discussions were held, and one of the offerors ultimately withdrew from the competition. Upon completion of discussions, the Air Force requested the submission of best and final offers (BAFOs) and cautioned that any BAFO which contained changes which were not adequately explained, or which failed to provide "complete traceability" from the offeror's previous position, might not be considered credible for purposes of the final evaluation and source selection.

The Air Force performed LCC evaluations on the basis of the B-tables provided in the offerors' BAFOs. Discrepancies were noted between each of the firms' L-tables and the Air Force's calculations. With respect to Timeplex's BAFO, the agency found that its own LCC evaluation was \$7.3 million, while Timeplex's L-table reflected a cost of only \$5.9 million.

The Air Force states that it recomputed its LCC evaluation and reviewed Timeplex's initial proposal to see if there were any special pricing provisions or discount factors not carried forward to the BAFO. The Air Force concluded that there was no evidence of error in Timeplex's B-tables. Accordingly, the Air Force concluded that its \$7.3 million LCC evaluation based upon the B-tables in Timeplex's BAFO was correct, and that the cost summaries provided by the firm in the L-table had

been erroneously calculated. The Air Force determined that this discrepancy between its LCC evaluation and Timeplex's L-table was not a sufficient reason to reopen discussions and, accordingly, awarded the contract to Dataproducts as the offeror proposing the lowest contract LCC to the government.

After being notified of the award to Dataproducts at a present value contract price of \$6.7 million, Timeplex contacted the Air Force to ascertain the Air Force's evaluated LCC for Timeplex's BAFO and how the Air Force had arrived at that amount. Upon being informed, Timeplex indicated that it had identified an error in its proposal, but that the submitted L-table was in fact correct. During a subsequent debriefing, Timeplex stated that it had prepared the L-table first because of time constraints, and then had intended to structure those costs summaries back into its B-tables. The firm asserted that the B-tables were in error as it had intended to offer monthly maintenance for the multiplexers on the basis of one installed configuration (two multiplexer units), rather than on a per unit basis. The firm acknowledged that the B-tables should have stated a unit monthly maintenance charge of \$170 or should have specified that the \$340 as stated was on a "per pair" basis.

Timeplex contends that because its L-table, directly calculated from the firm's proposal worksheets, was correct and showed a total offered price of \$5.9 million, it was entitled to the award as the low evaluated LCC offeror. Timeplex strenuously urges that the Air Force, upon observing the wide discrepancy between the Air Force's LCC evaluation (based upon the B-tables) and Timeplex's submitted L-table, was obligated to notify the firm of a suspected mistake and give it an opportunity to verify its BAFO. Timeplex therefore asserts that the Air Force's failure improperly displaced it as the low offeror. We do not agree.

#### Analysis

The Federal Acquisition Regulation (FAR), 48 C.F.R. § 15.607 (1984), sets forth procedures with respect to mistakes in competitive proposals disclosed prior to award.<sup>2/</sup> Generally, contracting officers must examine all

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<sup>2/</sup>The alleged mistake here was first asserted by Timeplex after award, but the firm argues that the discrepancy between the B-tables and L-table in effect "disclosed" a mistake to the Air Force prior to award.

proposals for minor informalities or irregularities and apparent clerical mistakes; communications with offerors to resolve such matters are not viewed as discussions unless they would prejudice other offerors. FAR, 48 C.F.R.

§ 15.607(a). Otherwise, mistakes are usually resolved through the normal course of discussions. FAR, 48 C.F.R.

§ 15.607(b). However, when award is to be made without discussions, and the contracting officer suspects a mistake in a proposal, the regulations provide that he shall advise the offeror of the suspected mistake, or identify the area of the proposal containing the mistake, and request verification. FAR, 48 C.F.R. § 15.607(c)(1). The regulations do not expressly deal with a situation where an error is suspected as a result of what is contained in a BAFO.

See Klein-Sieb Advertising & Public Relations, Inc., B-194553.2, Mar. 23, 1981, 81-1 CPD ¶ 214 (a case involving the analogous provision of the Defense Acquisition Regulation, which is now superseded by the FAR, 48 C.F.R. § 15.607, supra).

In this case, we agree with the Air Force that the mistake Timplex allegedly made in its B-tables was not a minor informality or irregularity or apparent clerical mistake within the meaning of the FAR, 48 C.F.R.

§ 15.607(a). As provided by the FAR, 48 C.F.R. § 14.405 (referenced in section 15.607(a)), a minor informality or irregularity is one that is merely a matter of form rather than substance, and which may be waived or corrected without prejudice to other offerors as having an immaterial effect on price, quantity, quality, or delivery when contrasted with the total cost or scope of the supplies or services being acquired. Clearly, the error made by Timeplex in the B-tables is not a minor informality or irregularity because it has a material effect on price and correction of the mistake would displace another offeror. Moreover, the alleged misstatement as to intended monthly maintenance charges does not constitute an apparent clerical error because it does not involve a simple mathematical mistake, examples of which are set forth in the FAR, 48 C.F.R. § 14.406-2(a) (also referenced in section 15.607(a)).

The requirement in section 15.607(c) that the contracting officer request verification where a mistake is suspected also is inapplicable because that section only deals with mistake situations where the award is to be made without discussions, which is not the case here. There were numerous discussions between the agency and Timeplex prior to the submission of BAFOs, and the Air Force states that there was never any suspicion of mistake in the firm's

initial proposal. In fact, Timeplex does not dispute that the alleged mistake first arose in its BAFO, and as previously noted, the FAR simply does not address this situation. Nevertheless, we do not think this necessarily excuses an agency from requesting verification of a BAFO where a mistake is suspected. Accordingly, the principal question to be resolved here is whether the Air Force was on notice of a mistake in Timeplex's BAFO.

We do not accept Timeplex's assertion that the Air Force was on notice of a mistake in Timeplex's BAFO due to the large discrepancy between the B- and L-tables. As the Air Force states, it assumed that Timeplex had merely miscalculated the various cost summaries in the L-table, which, the Air Force emphasizes, served only as a summary of the prices listed in the B-tables, and was not the basis for award. We think that the Air Force's assumption was reasonable, given that the normal procedure would have been to calculate the L-table summaries from the various pricing elements stated in the B-tables. In this regard, we fail to see how the Air Force could have known that Timeplex had prepared its BAFO by first calculating the L-table summaries directly from its worksheets and then attempting to structure those summaries back into the B-tables. In short, although the Air Force was obviously aware of the discrepancy, we do not find any evidence that it was on notice of a mistake in the B-tables concerning the monthly maintenance charge for multiplexers since that charge was clearly stated in the B-tables on a unit price basis.<sup>3/</sup> Therefore, we do not find that the Air Force was on notice of a potential error in Timeplex's offer requiring verification. See Centennial Systems, Inc., B-201853.2, Apr. 16, 1982, 82-1 CPD ¶ 350.

Furthermore, we find no legal support in the cases cited by Timeplex for its position that the Air Force acted improperly by not reopening discussions. For example, in American Management Systems, Inc., B-215283, Aug. 20, 1984, 84-2 CPD ¶ 199, we held that where an offeror's proposal indicated a unit charge of \$2.50 per tape/per day in one

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<sup>3/</sup>In this connection, we note that the review undertaken by the Air Force after discovering the discrepancy between Timeplex's B- and L-tables included an examination of Timeplex's Federal Supply Schedule price list, which had been submitted with the firm's initial proposal. The agency found that all maintenance charges were on a per unit basis, and that Timeplex did not offer a "per pair" maintenance plan.

area of its proposal, and the price for tape storage in other areas of the proposal reflected a unit charge of \$2.50 per tape/per year, the contracting officer was on notice of a material deficiency which should have been resolved through discussions. That case is clearly distinguishable from the present matter, however, because the discrepancy there was apparent on the face of the initial proposal and should have been detected during proposal evaluation. In essence, in that case, the agency's action was a failure to conduct meaningful discussions. Here, the alleged mistake was not apparent in Timeplex's initial proposal but only arose in its BAFO after discussions had been concluded.

The protest is denied.

*fa* *Seymour Efron*  
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General Counsel